

## AN APPRAISAL OF THE PERFORMANCE OF THE 5<sup>TH</sup> REPUBLIC THIRD TIER LEGISLATURE IN NIGERIA<sup>1</sup>

### Abstract:

*The third tier of government in Nigeria, most times referred to as Local Government, is basically a government structure that provides administration at the local or grass root level. This presupposes the existence of other levels of governance; and in Nigeria, the federal and state governments readily come to mind as the first and second tier of government respectively. The introduction of this third tier of government was intended to bring government and the benefits of governance closer to the people. Having concluded recently the 5<sup>th</sup> Republic, the purpose of this paper is to examine the performance of the third tier of government in this dispensation. The paper does an overview of its strengths and weakness, with the intention to recommending to the 6<sup>th</sup> Republic Third Tier Legislation, a better way forward. In doing this, this paper becomes very relevant to governance and performance tracking in governance. The methodology we adopt is the doctrinal research approach.*

**Key words:** *Third Tier, Legislature, Performance, governance, roles and responsibilities.*

### 1. Introduction

Several definitions and explanations have been proffered to throw light on the true import of the term ‘local government.’ The Encyclopedia Americana defines local government as “a political subdivision of national government or in the case of Federal Systems, a subdivision of regional Government”.<sup>2</sup> In like manner, the United Nations Office for Public Administration explains local government as “a political division of a nation (in a Federal or State system) which is constituted by law and has substantial control of local affairs including the power to impose taxes to exact labour for prescribed purposes”.<sup>3</sup> Under the 1976 Local Government Reforms in Nigeria, Local Government is portrayed as “government at local level exercised through representative councils established by law to exercise specific power within defined areas”.<sup>4</sup> Robson defines local government as involving “the conception of a territorial, non-sovereign community possessing the legal right and the necessary organ to regulate its own affairs. This, in turn, presupposes the existence of a local authority with the power to act independently of external control as well as the participation of the local community in the administration of its affairs”.<sup>5</sup> It is apparent that these definitions only vary in semantics; the substance remains the same and according to Ephraim,<sup>6</sup> a local government in its true meaning consists of the following features:

- a. Local government is government at the local level;
- b. It has its autonomous existence and endowed with a legal status;
- c. Specific powers are reserved for it;
- d. It can impose taxes and incur expenses;
- e. It exists within a defined territory;
- f. It is seen as a distinct tier of Government;

<sup>1</sup>By **Prof. Offornze D. AMUCHEAZI**, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. Phone: 08033130942. E-mail: offornze@yahoo.com; and **Dr. Elizabeth Ama OJI**, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. Phone: 08033123974. E-mail: lizzyejitu@yahoo.com, or ae.oji@unizik.edu.ng.

<sup>2</sup> The Encyclopedia Americana, International Edition (1978), volume 17

<sup>3</sup>Quoted in F R Ola, *Local Administration in Nigeria*, (London, Kegan Paul International Plc. 1984)

<sup>4</sup>Guidelines for Local Government Reforms, 1976

<sup>5</sup>W.A. Robson, in *Encyclopedia of Social Sciences*, International Edition 1978

<sup>6</sup> E S Essien, “The Role of the Local Government in the attainment of UN MDGs” [www.nideref.org/index.php?option=com](http://www.nideref.org/index.php?option=com) 12/7/13

- g. It must provide authority over a given population;
- h. It must provide avenues for the promotion of the welfare of the members of the community;
- i. It comprises elected members, such as chairmen and councilors.

## **2. History of Local Government Administration**

Local Government Administration in Nigeria dates back to the colonial era, particularly in 1861 when the first steps were taken by Britain to establish an administration. At inception, the British introduced an administration based on indirect rule. Since then, local government administration in Nigeria has undergone several changes and reforms culminating in the current structure and constitutional provisions of the present 774 local government areas in Nigeria. The Indirect Rule system (1891-1929) was rule by the British through indigenous kings and chiefs. While this system gained some success in Western and Northern parts of Nigeria where the local institutions were well established, the system was not that successful in Eastern Nigeria due to absence of well-established local institutions. This gave rise to the Native Authority (1931-1949) System established by Donald Cameron in 1931. Under this system, Council members were elected for the first time but the system was largely undemocratic due to the dominating role of British District officers coupled with the fact that most of the nationalist flag bearers were excluded from council membership. Consequently, by 1948, John Macpherson, then Governor of Nigeria, initiated reforms aimed at establishing a democratically elected Local Government Council.

Between 1950 and 1955, the first largely elected local government council based on the British Whitehall model emerged in Lagos and the former Eastern and Western regions. Traditional rulers constituted not more than 25 percent of most councils in Lagos and Western region.<sup>7</sup> It is worthy to note that the active participation of natives in local government councils imbued in them the nationalist mood to agitate for independence, which came in 1960.

The post-Independence era witnessed a decline in the status of local governments in Southern Nigeria. First, the Local Government (Amendment) Law 1960 abolished the powers of councils to levy some taxes, which reduced the revenue base of the councils. Secondly, the military intervention of 1966 led to a reduction in statutory grants and loss of local government autonomy in financial affairs. Thirdly, local government ceased to exist temporarily in the former Eastern region due to the civil war and the system could not recover its status even after the war. However, the North witnessed a gradual increase in the number of elected members of local authorities, a stable administration and assumed more responsibilities like primary education. But with the new state structure introduced by the military in 1967, there was need to streamline local government administration across board in the country. Consequently, the federal government in collaboration with the state governments embarked on extensive reforms of local governments in 1976 which gave birth to a uniform system for the whole country.

Further reforms to the local government were contained in the 1979 Constitution of the Federal Republic of Nigeria, the 1984 Dasuki Report of the Nigerian Local Government, the 1992 Handbook on Local Government Administration, the 1989 Constitution of the Federal Republic of Nigeria, 1992 Handbook in Local Government Administration and the 1999 Constitution of the Federal Republic of Nigeria. These subsequent reforms did

---

<sup>7</sup> Igbuzo, "Local Government Reform and Constitutional Review in Nigeria" <<http://www.dawodu.com/otive1.htm>> 27/6/13

not deviate in substance and essence from the 1976 Local Government Reforms, but rather derived from them. Thus, the 1976 Reforms became the foundation of modern local government laws and practice in the Federal Republic of Nigeria. Basically, the structure of the presidential system of local government at the grass roots level consists of the legislature and the executive, the judiciary being absent. The executive arm consists of the chairman, vice chairman, supervisors and secretary of council. The chairman of the local government council is the chief executive and accounting officer of the council. The secretary of council, and the supervisory councilors are appointed by the chairman of council. The legislative arm of the local government council is composed of the leader of the council and other councilors.

### **3. The 1999 Constitution and the Third Tier Legislature in Nigeria**

The constitutional basis for the exercise of legislative authority at the local government level is anchored on section 7 of the Constitution of Federal Republic of Nigeria 1999. The section provides that “the system of local government by democratically elected local government councils is under this Constitution guaranteed ...” while subsection (5) provides for the functions of a Local Government Council as detailed in the Fourth Schedule to the constitution. The functions of the local government under the fourth schedule imply that the legislative arm of the council can legislate on them. Herein lies the scope of constitutional powers to make laws under the third tier legislature in Nigeria. In fact, paragraph 1 of the Schedule can be termed the exclusive list; while paragraph 2 is the concurrent list. The exclusive list of functions are those functions that are solely performed by local governments, while the concurrent list of functions is those that the local government performs in collaboration with state and federal governments. The state and/or federal government can also perform these functions on behalf of local governments until local governments are in a position to perform such functions. Under paragraph 1 of the Fourth Schedule to the 1999 Nigerian Constitution, the main functions of a Local Government Council are as follows:

- (a). The Consideration and the making of recommendations to a State commission on economic planning or any similar body on-
  - (i). The economic development of the State, particularly in so far as the areas of authority of the council and of the State are affected, and
  - (ii) proposals made by the said commission or body;
- (b). collection of rates, radio and television licenses;
- (c). establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm;
- (d). licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts;
- (e). establishment, maintenance of and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences;
- (f). construction and maintenance of roads, streets, street lightings, drains and other public highways, parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a State;
- (g). naming of roads and streets and numbering of houses;
- (h). provision and maintenance of public conveniences, sewage and refuse disposal;
- (i). registration of all births, deaths and marriages;
- (j). assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State; and
- (k). Control and regulation of-
  - (i). out-door advertising and hoarding;
  - (ii). movement and keeping of pets of all description,

- (iii). shops and kiosks,
- (iv). restaurants, bakeries and other places for sale of food to the public
- (v). laundries, and
- (vi). licensing, regulation and control of the sale of liquor.

Under section 2 of the Fourth Schedule, the functions of a Local Government Council shall include participation of such council in the government of a state as respects the following matters-

- (a). the provision and maintenance of primary, adult and vocational education;
- (b). the development of agriculture and natural resources, other than the exploitation of minerals;
- (c). The provision and maintenance of health services; and
- (d). such others functions as may be conferred on a local government council by the House of Assembly of the State.

#### **4. The Roles and Responsibilities of Local Government Legislatures**

Legislatures are set up to represent the people and as such play central roles in a constitutional democracy. A local government legislature comprises of the leader of the council, the deputy leader and councilors. The legislative powers and functions vested in the Local Government Council include:

##### **(i). Law Making**

The Legislature makes bye-laws. The list of matters on which a Local Government Council is expressly empowered to enact bye-laws are contained in section 1 (a), (b) of the Fourth Schedule of the 1999 constitution for the exclusive list. The concurrent list of matters on which both a Local Government Council and the State Assembly have powers to legislate on are on section 2 (a) (b) of the Fourth Schedule.

##### **(ii). Making Resolutions and Approval**

The Council exercises its powers through resolutions and approvals like-

- (a). Debating, approving and amending the annual budget of the local government;
- (b). A resolution to remove the Chairman or Leader of the Council is by a two thirds majority. This function is distinct from the authority to make bye-laws, which have wide applicability in the area.<sup>8</sup>
- (c). The power to approve by a simple majority of the members of the Council the nomination of the Chairman of the local government, for the appointment of the Vice-Chairman of the local government in case of vacancy by reason of death, resignation or removal.
- (d). The power to approve the nomination of any one appointed by the Chairman of the local government as supervisor.<sup>9</sup>

##### **(iii) Power of oversight**

They do this by vetting and monitoring the implementation of projects and programmes in the annual budget of the local government and examining and debating the monthly statement of income and expenditure rendered to it by the Chairman of the local government;

##### **(iv) Power to Advise**

The Local Government Council can advise, consult and liaise with the Chairman of Council on issues affecting the local government.

---

<sup>8</sup>M. O. Ojong, "Introduction to local Government Administration in Nigeria", 75. *Jerry commercial productions*, (2002).

<sup>9</sup>S.C. Ugwu, *Issues in Local Government and Urban Administration in Nigeria*, 18. Echris & Co., 2002.

**(v). Other Functions**

The Council can perform such other functions that may be assigned to it from time to time by an edict or law of the state in which it is situated.

**5. The Scorecard of the Third Tier Legislature in the 5<sup>th</sup> Republic**

As already stated, the legislature is that arm of government charged under the constitution or enabling law with law making powers and policy formulation for the peace, order and good governance of a given geographical territory, be it the federal, regional, state or local government. Legislatures ideally comprise of elected representatives of defined constituencies and serve as “the key political forum through which people’s concerns are voiced and interests are mediated”.<sup>10</sup> They act as a check on the executive through oversight responsibilities and confirmation powers over certain nominees for appointive and judicial offices. The legislature is therefore uniquely and powerfully situated to frame the nation’s laws and policies, and ensure that the government is open, transparent and accountable.

As we mentioned earlier, local government in Nigeria is structured after the presidential system but consists of only two arms i.e. the executive and the legislature. To assess the scorecard of the third tier legislature will depend on how well it is able to assert its independence in-

- a. Enacting bye-laws,
- b. Debating, approving and amending the annual budget of the local government;
- c. Oversight i.e. vetting and monitoring the implementation of projects and programmes in the annual budget of the local government;
- d. Examining and debating the monthly statement of income and expenditure rendered to it by the Chairman of the Local Government;
- e. Exercising its powers of confirmation of the appointees of the Chairman of Council.
- f. making resolutions and the level of compliance by the executive,
- g. electing its principal officers,
- h. the level of participation of the people in the affairs of the councils,
- i. the development index in the local councils, and
- j. generally, the level of success of the local councils in performing its constitutional functions.

**5.1 Level of Existence of the Third Tier of Government**

The key elements of democratic consolidation include the extent to which the most powerful decision-makers are selected through fair, honest and periodic elections; and the exercise of popular control by citizens, the degree of freedom of speech and association; etc. The 1999 constitution provides for a democratically elected local government councils as the third tier of government in Nigeria to ensure accountability and grass root participation in governance. Regrettably, out of 36 states in Nigeria, only about 13 states conducted elections in their local government areas. That means 23 out of 36 states ran their local governments with caretakers that were appointed by Governors.<sup>11</sup> States like Anambra did not conduct any council elections for almost eight years. Where elections were held, such elections were characterized by dictatorial imposition of candidates. The reality therefore, is that there was little or no presence of legislative organ in local government system in Nigeria. It is quite worrisome that despite

---

<sup>10</sup> UNDP, Parliamentary Development Practice Note 4(2003) cited in O Oko, “*Legislators in Changing and Challenging Times – An Analysis of the Nigerian National Assembly*, (Glassboro New Jersey, Goldline and Jacobs Publishing, 2014) 1.

<sup>11</sup>Absence of legislative Arm in Local Government [www.cislacnigeria.net/up-content/uploads/2013/01/oct-12.pdf](http://www.cislacnigeria.net/up-content/uploads/2013/01/oct-12.pdf) 12/7/13

the whole local government reform, this third tier of government is yet to achieve the aim for its creation due partly to the absence of a viable third tier legislature.

## 5.2 Weaknesses and Challenges of the Third Tier Legislature

### a. Absurd legal framework to carry out legislative functions:

First, Section 7(1)(5) of the 1999 constitution in one breath provides for democratically elected local government and in the Fourth Schedule to the constitution provides for its functions, while in another breath it empowers the States to make laws for the establishment, structure, finance and functions of such councils. Secondly, the constitution in paragraphs 11 and 12 of the concurrent legislative list gave the National Assembly as well as the State Houses of Assembly the powers with respect to the registration of voters and the procedure regulating elections to a local government council. Finally, the Constitution provides for a four-year term for federal and state elected political office holders, but made no provision for tenure of elected local council officers. The confusion created by the constitution has given governors the leeway to manipulate the affairs of local councils. It is under this law that states are able to interfere in the proper functioning of the councils.

### b. Instability arising from adverse interference by other levels of government:

While at the national and state levels, the legislature struggles to assert its independence from undue interference from the executive led by an authoritarian leader that may seek to subvert, control and dominate the legislature, the local government council legislature does not just suffer from such horizontal interference but vertical interference from the federal and state governments. Rules, traditions and virtues that preserve and promote the independence of the legislature have been totally eroded and subverted. Governors remove council chairmen at will without recourse to the power of council legislature to impeach or remove a chairman of council for gross misconduct. Also, the State Houses of Assembly have assumed the law making powers of council legislatures.

### c. Lack of capacity/incompetence:

Democratic practices are relatively new in Nigerian due to military intervention. Frequent disruption of the democratic process has left the legislature with neither experience nor tradition. Most legislators know or understand very little about the system of government they are elected to operate. They therefore have no democratic mindset to model their conduct. Some legislators lack the expertise or even the information to engage in meaningful debates and discussions on matters before them. Some legislators do not interact with their constituents as often as they should. They also need adequate financial resources to support their activities.

### d. Poor financial base and limited revenue:

Most Local Government Councils rely solely on allocations from federal and state governments. Most of the chairmen complain about lack of funds and high overheads. This is partially true. It is true that the local governments lose, on the average, about half of each monthly allocation to the predatory supervision of state governments. Also, state governments withhold their statutory contribution of 10% of IGR to LGA. The legislative arm is therefore denied of resources to carry out its activities. But it is also true that local government politics is associated with the most bizarre form of looting of public funds. While local governments parade a long line of

ex-chairmen who became overnight millionaires, they cannot equally boast of a long list of development projects that have alleviated decades of under-development.<sup>12</sup>

## **6. The Need to Strengthen the Third Tier Legislature and Future Prospects**

The undue control of the local governments by the Governors and the State Houses of Assembly in the federation is very worrisome. In most States, the Governors are administering the local governments indirectly by refusing to conduct elections into the local governments but instead appointed their cronies as Transition Committee Chairmen and Members or as Sole Administrators. Where they manage to conduct elections through the instrumentality of the State Independent Electoral Commissions, members and supporters of their political parties are rigged into offices as either Executive Chairmen or Councilors. This unwelcome development has weakened our democracy as councilors elected into the council legislature cannot assert their independence to make laws or resolutions for the common good of all.

Our democratic experience will never yield desired results unless we get it right at the local government level. We should remember that the local council is where future political players at the state and national level cut their political teeth. The current dilemma of democratic governance at the local level is largely attributable to the untidy constitutional provisions. If we must make a head way, Section 7 and other related provisions of the 1999 constitution must be amended to ensure that the local governments are made autonomous or independent of the apron strings of the state governments. In this regard therefore:

- The legislative arm made up of Councilors should be allowed by the Constitution to make laws for the local government as well as carry out the necessary oversight functions at that level.<sup>13</sup>
- Scrap State Independent Electoral Commissions and empower the Independent National Electoral Commission (INEC) to also conduct elections into the local governments.
- A four-year term of elected local government officers should be provided for in the Constitution as applicable at the federal and state levels.
- Clearer delineation of the powers and duties of state and federal tiers - e.g. over creation of local government areas is necessary.
- Clearer delineation of functions of LGC's and state governments is also needed.

Except for the absence of the judiciary, the local government structure as it is, has both executive and legislative arms and has potentials for actualizing its purpose only if democratic culture is institutionalized at that level.

## **7. Conclusion**

It is regrettable that the Constitution granted the state governments the sole right to interfere in the administration of the local government ranging from conducting elections into the Local governments, disbursement of allocations and other funds accruable to them from the federation account and also empowering the State Houses of Assembly to oversight and make laws for local governments. Over the years, efforts have been made to reform the local government system and increase the participation of the people for better service delivery. The

---

<sup>12</sup>The Contribution of Local Government System to the growth of our Democracy.  
[www.senatorchukwumerije.net/id94.html](http://www.senatorchukwumerije.net/id94.html) 12/7/13

<sup>13</sup>African Youth Development Foundation  
[www.change.org/petitions/the-local-government-as-the-third-tier-of-government-should-be-made-autonomous](http://www.change.org/petitions/the-local-government-as-the-third-tier-of-government-should-be-made-autonomous)  
 15/7/13

fact that the local government system is still in a sorry state in Nigeria is an indication that there is something fundamentally wrong with the system. The legal framework is faulty and it must be fixed for the country to be counted in the comity of nations. Democracy thrives where the legislature is able to assert its independence and has the capacity and resources to discharge its obligations efficiently and effectively. Efforts must be made to create or, where they already exist, strengthen the capacity of legislators to perform their basic task of law making, oversight and representation.